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DEPT FOR AF/E, AF/EPS, INL/C/CP, S/CT  
TREASURY FOR VIRGINIA BRANDON  
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TAGS: [KCOR](#) [KCRM](#) [PREF](#) [ECON](#) [EFIN](#) [KE](#)

SUBJECT: Kenya: Update on Charterhouse Money Laundering Scandal

REF: A. NAIROBI 1185 B. 06 NAIROBI 4105 C. 06 NAIROBI 3217

[D](#). 06 NAIROBI 2870 E. 06 NAIROBI 2482 F. 06 NAIROBI 1688

[G](#). 06 NAIROBI 1614

Classified By: Econ/C John F. Hoover for reasons 1.4 (B) and (D).

[1](#)1. (C) Summary: The massive money laundering and tax evasion scandal involving Kenya's Charterhouse Bank remains stuck in legal limbo, but the momentum is with the Central Bank of Kenya (CBK), which is seeking to liquidate the bank once and for all. But doing so will be tricky in light of a series of ongoing legal challenges filed by Charterhouse. The CBK hopes to steal a page from Kenya's tax collectors, who in the same case have secured a large payment from one of Charterhouse's biggest tax-evading clients. The CBK wants to avoid a protracted legal struggle which could last a decade or more. It hopes instead to squeeze Charterhouse to repay legitimate depositors and then liquidate the bank through an agreement reached out-of-court. Meanwhile, Kenya continues to lack the legal basis to make money laundering a crime. A draft anti-money laundering bill is again being considered in Parliament, but prospects for passage are uncertain. End summary.

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Background: The Dirtiest Little Bank in Kenya  
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[1](#)2. (C) Reftels chronicle the arcane saga of Nairobi-based Charterhouse Bank, and the courageous efforts by the Central Bank of Kenya (CBK) to close and liquidate it on the basis of strong evidence showing Charterhouse was engaging in large-scale tax evasion and money laundering over a period of several years through 2004. In response to this evidence, Charterhouse was put under statutory management in June 2006 - a first in Kenyan history for a solvent bank. Charterhouse proceeded to blitz the CBK and the Ministry of Finance with a series of questionable legal challenges in courts across Kenya, including some in smaller cities where it appears local judges were somehow more amenable to ordering that Charterhouse be reopened for business. One even barred the CBK from sharing the results of its investigation into Charterhouse with the Ministry of Finance, as per its legal mandate. Others called for the arrest of the statutory manager, CBK official Rose Detho, for contempt of court.

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CBK Fights Off Bank's Nuisance Suits  
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[1](#)3. (C) The CBK, under the tenacious leadership of then-Acting Governor Jacinta Mwatela, fought back, appealing all such adverse rulings and somehow managing to keep Charterhouse closed. In

December 2006, the momentum shifted when Finance Minister Amos Kimunya refused to renew the Charterhouse's operating license, leaving it in legal limbo and unable to re-open. Then, in March 2007, a court in Milimani, Nairobi ruled unambiguously in the CBK's favor in one of the several court cases it had appealed (ref A). Currently, there are 22 court applications that have been filed by Charterhouse lawyers, four of which are actual court cases pending against the CBK. The CBK is seeking to have the Chief Justice consolidate and expeditiously adjudicate the cases, but so far without luck. Thus the effort to liquidate the bank is bogged down in a series of nuisance suits that could drag out for years.

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#### No Final Resolution, But Statutory Manager Extended

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¶4. (C) With Charterhouse down, but far from out, the CBK requested earlier this year an extension of the statutory management mandate by one year. Agreeing with the CBK's argument that the Charterhouse-inspired legal mischief of the past year had made it impossible to definitely resolve the case, a High Court in Nairobi on June 22 granted that request, despite objections by Charterhouse lawyers. Rose Detho, recently promoted to Director of Bank Supervision at CBK, thus stays on another year in her role as statutory manager.

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#### What Now? Settle Out of Court?

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¶5. (C) In a lunch meeting August 7 with Econ/C and Econ Assistant, CBK Governor Ndung'u and Detho said that CBK is looking at a means of quickly and definitively resolving the case. It must tread carefully, however, said Ndung'u. With three adverse court decisions against it still under appeal, the CBK does not want to be seen as trampling on the prerogatives of the judiciary, no matter how flawed the underlying rulings, by taking unilateral executive action to liquidate the bank. At the same time, however, Ndung'u acknowledged that waiting for the courts to resolve the case definitively would likely take 10-20 years given the inefficiency of the judiciary and the ability of Charterhouse to use the legal system to mount more suits and appeals.

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#### Tax Cheat Settles Tax Bill

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¶6. (C) Ndung'u gave nothing away, but implied that the CBK would try to squeeze Charterhouse and reach an out-of-court settlement. He said there is precedent: One of the bank's prime tax evading clients, Nakumatt Holdings, had settled the tax evasion charges against it by paying the Kenya Revenue Authority KSh 475 million (\$7 million). This was considerably more than the original offer of KSh 300 million, which Nakumatt had at first spurned. Ndung'u outlined a two-step plan to first compensate legitimate depositors, and then squeeze what was left of the bank into liquidation.

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#### CBK Wants to Be Hunter, Not Prey

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¶7. (C) Ndung'u said the type of people who own Charterhouse often win by wearing down their opponents until they tire and give up, much as a hyena does in stalking its prey. In this case, he said, the CBK will never tire. Indeed, Ndung'u said he hoped it could turn the tables - becoming the hunter, and not the hunted. The soft-spoken Ndung'u said he had thus far refused to meet with representatives of Charterhouse, saying, "I'll only meet with them when they're on their knees."

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#### Comment

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¶8. (C) These are brave and inspirational words from Governor Ndung'u, and we have no doubt as to his integrity and tenacity in taking on Charterhouse and the backers it no doubt has in high places. Moreover, momentum has for now also swung back to the CBK in

light of the most recent court cases. But it ain't over till it's over, and we think it's entirely possible Charterhouse will at least be able to avoid final liquidation indefinitely by exploiting the loopholes that litter Kenya's legal system and make it so easy to use the "rule of law" to frustrate the delivery of real justice.

19. (C) A big part of the problem is that Kenya continues to lack a legal basis for detecting and prosecuting money laundering. The anti-money laundering (AML) bill, drafted with assistance from the USG over three years ago, is again on the floor of the Parliament. But will it pass? Rumors swirl that prominent members of the current government, which is sponsoring the bill, are quietly trying to kill it, afraid that it might "interfere" with campaign fund raising activities in this key election year. Septel will report on the outcome of the protracted struggle to pass an AML bill and on what the U.S. Mission has done and is doing to help make it happen.  
Ranneberger